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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 JUNNE KOH,

10 Petitioner,

11 v.

12 UNITED STATES OF AMERICA,

13 Respondent.

CASE NO. C18-684 RSM

ORDER DENYING PETITIONER'S
MOTION UNDER 28 U.S.C. § 2255 TO
VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL
CUSTODY

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15 **I. INTRODUCTION**

16 This matter comes before the Court on Petitioner's Motion Under 28 U.S.C. § 2255 to
17 Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. Dkt. #1. On March 17,
18 2016, the Undersigned entered Judgment in Petitioner's criminal case. *United States v. Koh*,
19 CR15-98RSM, Dkt. #88 (W.D. Wash. Mar. 17, 2016). Petitioner was adjudged guilty of three
20 offenses and sentenced to sixty months in prison. *Id.* Petitioner now seeks relief from that
21 sentence on the basis that his arrest was in violation of his constitutional rights, that he received
22 ineffective assistance of counsel, and that evidence of his possession of handguns should have
23 been suppressed. Dkt. #1 at 4–8. The Court has determined that an evidentiary hearing is not
24 necessary. *See* 28 U.S.C. § 2255(b). After considering the briefing and the remainder of the
25 record, and for the reasons set forth below, the Court denies the § 2255 Petition.
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II. BACKGROUND¹

Petitioner Junne Koh immigrated from South Korea to Washington State with his family around 1979. In 1984, Petitioner killed one of his brothers and was convicted of second-degree murder and was sentenced to 123 months in prison. After completing his sentence, he was ordered removed, and was deported to South Korea in 1992. Shortly thereafter, Petitioner assumed his dead brother's identity and illegally reentered the United States.

Petitioner's family apparently continued to live in Washington and in 2014, Petitioner returned to Washington to locate his family. When he could not locate them, he became concerned and contacted the Bellevue Police Department. Using his brother's name, Petitioner filed a missing persons report. Police contacted Petitioner at his parents' home to investigate the report and ultimately discovered that Petitioner possessed a handgun in the house and another handgun in a storage locker. Police also determined that Petitioner had obtained a Washington State Identification Card under his brother's identity. Law enforcement was not able to contact Petitioner in person until several months later, when he was arrested in Los Angeles, California.

Petitioner was extradited to Washington where he confessed to law enforcement and was ultimately prosecuted for federal crimes. In defense, Petitioner argued, among other things, that the officers had acted unconstitutionally in their interaction at his parents' house and in their discovery of the handguns. Petitioner sought to suppress statements he had made to law

¹ The background of this case is well known to the parties and laid out in detail by the Government in its Answer to the Petition. Dkt. #6 at 2–15. The Government provides detailed citations to the criminal proceedings before this Court and the excerpts of record submitted to the United States Court of Appeals for the Ninth Circuit. *Id.* at 2 n.1. Other than arguing that many of the facts are irrelevant and incendiary, Petitioner does not challenge the factual background as laid out by the Government. As such, the Court adopts the Government's summary and further summarizes without citation to the record.

1 enforcement and evidence obtained from his parents' house and his storage locker, including the
2 handguns.

3 Because the suppression hearing turned on law enforcement's investigation into
4 Petitioner's missing persons report and the interactions between Petitioner and law enforcement
5 during their contact at Petitioner's parents' home, additional background is necessary. Petitioner
6 filed a missing persons report with the Bellevue Police Department in early June 2014, indicating
7 that he had arrived in the area in February and had been unable to locate his family. He had
8 recently been contacted by his mother who indicated that his family was in California but would
9 not provide a specific location. Petitioner indicated that he suspected either that Jehovah
10 Witnesses may have kidnapped his parents or that his parents' next-door neighbor may be
11 involved. Through their initial investigation, law enforcement learned of the 1984 murder in the
12 family and that the next-door neighbor found it unusual that he had not seen Petitioner's parents
13 for several months. The neighbor also indicated that Petitioner had told him that Petitioner had
14 purchased a rifle because he did not feel safe. The initial investigator indicated concern as to
15 Petitioner's mental state.
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18 Bellevue Police Detectives Jerald Johnson and Andy Norton followed up on the initial
19 investigation. Johnson learned that Petitioner's brother had apparently quit his janitorial job in
20 February of 2014. Officers went to Petitioner's parents' house to contact Petitioner. The
21 following relevant facts were presented to the Court during the suppression hearing:

22 Around 10:45 a.m. on June 17, 2014, Johnson and [Norton] drove to see
23 [Petitioner] at his parents' house. They arrived in an unmarked police vehicle and
24 wore plain clothes with their firearms hidden. The detectives knocked on the door
25 to [Petitioner's] residence and [Petitioner] answered. He identified himself as [his
26 brother] and Johnson recognized him from the Washington State driver's license
27 photo.

1 The detectives identified themselves, told [Petitioner] they were
2 responding to his complaint about his missing parents, and asked if they could
3 come in. [Petitioner] invited them inside. While they were all in the living room,
4 [Petitioner] reiterated the information he had provided in the missing persons
5 reports he submitted to the city council and police department, including that he
6 suspected two Jehovah Witnesses and the next-door neighbor as being involved
7 in his family's kidnapping. He said he suspected his neighbor because his
8 neighbor had a California area code on his cell phone and the number
9 [Petitioner's] family had called from in June had the same area code.

10 Johnson testified that [Petitioner] was "very polite and welcoming" and
11 asked the officers to call him "Sam," which they did. Johnson said [Petitioner]
12 was anxious to share information regarding his missing family. Johnson further
13 testified that [Petitioner] seemed "nervous" and his hands were shaking. Johnson
14 said that while [Petitioner] was "very intent in providing us with information
15 related to" his family's disappearance, "he would get defensive when I'd ask him
16 certain questions about the disappearance and some of his actions." On cross-
17 examination Johnson said [Petitioner] acted defensively when Johnson asked him
18 why he had waited several months to report his family as missing and why he told
19 his neighbor that his family was on vacation in California if [Petitioner] thought
20 they were missing.

21 Johnson and Nelson also both testified that while they were discussing the
22 situation, [Petitioner] said if he found out his neighbor was involved in the
23 kidnapping of his parents, "he would go next door and shoot him." Also during
24 the interview, [Petitioner] sometimes went to a different room about four feet off
25 the living room and returned with documents, some of which were in protective
26 sleeves. One of the documents he provided to detectives was a pamphlet related
27 to suicide prevention, which [Petitioner] said he took comfort in reading.

Nelson said that after [Petitioner] commented about shooting his neighbor,
the detectives were "a little bit alarmed" that there might be a firearm in the house
and were worried about their own safety. Based on [Petitioner's] comments, his
production of the pamphlet on suicide prevention, and his demeanor, Johnson
started accompanying [Petitioner] as he went to the other room to retrieve
documents. Johnson would walk the approximate four feet to the bedroom door
and then stand in the hallway while [Petitioner] went into the room. According
to Nelson, Johnson started following [Petitioner] to "make sure that, just for our
safety, that he wasn't getting a gun or anything like that." As a result, Johnson
noticed blankets and other items at the end of the hallway. At one point Johnson
asked [Petitioner] if he could take a look around the house to see if there was
anything that might be related to the disappearance of [Petitioner's] family.
[Petitioner] agreed and accompanied Johnson as he looked around the house.
When they walked down the hallway, Johnson asked [Petitioner] why he had a
sleeping area set up in the hallway. [Petitioner] responded that he slept there to
avoid being kidnapped. Johnson also noticed padlocks attached to some of the

1 doors in the hallway. [Petitioner] claimed he felt safer having padlocks on the
2 doors so no one could come through bedroom windows without him knowing.

3 While looking at the bedding in the hallway, Johnson noticed in plain view
4 a knife, and a handgun on top of a holster, sitting on the floor. Johnson picked up
5 the firearm and the knife and brought them to Norton in the living room to hold.
6 He also explained to [Petitioner] why he was taking the handgun, which turned
7 out to be loaded.

8 Johnson said he confiscated the handgun and knife based on the report of
9 [Petitioner's] missing family, which Johnson considered questionable;
10 [Petitioner's] comments about potentially shooting his neighbor; the suicide-
11 prevention pamphlet; seeing that [Petitioner] had been sleeping on the floor with
12 padlocks on bedroom doors so no one could get to him; and also because
13 [Petitioner] became annoyed whenever Johnson pushed him on certain details of
14 his report, all of which Johnson thought raised safety concerns. When Johnson
15 asked [Petitioner] if he had any other weapons, [Petitioner] said he had another
16 firearm in a storage unit. After Johnson finished looking for information related
17 to the missing persons report, he sought to confiscate the second firearm for
18 community safety reasons, especially in light of the fact that there was a car in the
19 driveway to which [Petitioner] had access. Johnson told [Petitioner] he wanted to
20 go to the storage unit to retrieve the firearm for safekeeping pending completion
21 of the investigation. [Petitioner] agreed to take the officers to the storage unit.

22 [Petitioner] rode in the detectives' unmarked police vehicle to the storage
23 unit. [Petitioner] was not handcuffed or restrained. According to Johnson and
24 Norton, once they arrived at the storage facility, [Petitioner] went into the office
25 and then came out and entered a gate code, allowing them to drive to the unit.
26 [Petitioner] unlocked the unit, walked inside, picked up a box that he said
27 contained the other firearm and then brought it out of the unit and handed it to
Johnson. The detectives then drove [Petitioner] back to his parents' house.

19 Dkt. #6 at 5–8 (citations omitted).

20 Law enforcement was subsequently able to verify Petitioner's true identity and
21 determined that he had been using his deceased brother's identity since 1998. In further email
22 communications between Johnson and Petitioner, Petitioner indicated that he was in California
23 looking for his parents, but that he would contact Johnson in person on a specific date. Petitioner
24 did not meet with Johnson in person and two weeks later sent the following email to Johnson.
25

26 Dear Officer Johnson, I am sorry to be taking so long to answer your email. It is
27 not possible for me to go to the Bellevue police department to pick up pistols.

1 Because I am currently working in the North Dakota oil fields. Officer Johnson,
2 since I am not allowed to have guns, you can seize my pistols. Also I am not
3 allowed to live in the United States. I therefore use many identities including Sam.
4 Hope you understand my situation. Sincerely, Sam Koh.

5 *Id.* at 9.

6 Petitioner's version of the events differed. Petitioner indicated that during his contact
7 with the Detectives, Johnson "was aggressive" and searched his house, bedroom, bathroom, and
8 backyard. Petitioner indicated that he did not accompany Johnson during the searches and that
9 he was coerced into surrendering the firearms. Petitioner also testified that it was Johnson who
10 retrieved the second handgun from the storage locker and that only after this occurred did
11 Petitioner make a comment related to harming his neighbor. Petitioner did acknowledge that he
12 allowed Johnson and Norton to enter his parents' home, had indicated that he took comfort in
13 reading a suicide prevention pamphlet, and had assisted the detectives in accessing the storage
14 facility.

15 Upon hearing and weighing the evidence, the Court determined that the suppression
16 motion should not be granted as any search did not amount to a constitutional violation.
17 Specifically, the Court explained:

18 they were invited into the home voluntarily by [Petitioner]. He wanted them to
19 investigate his missing family. He wanted them to know that there might be
20 something nefarious going on with the neighbor, the entire discussion about the
21 area code being the same as his neighbor's cell phone, and maybe the phone call
22 that he had initially, earlier with the family, may have been actually through the
23 neighbor's telephone, all of those things.

24 Once the officers were in the home and listening to [Petitioner], as
25 Detective Johnson testified, he had some concerns about his mental status at that
26 point in time, not that he wasn't making sense, not that he wasn't able to
27 understand what the officers were saying. But the pamphlet on suicide, the
comment about the neighbor, all of those things would have been very concerning.
Somebody says, 'I'm going to shoot my neighbor if he had anything to do with
my parents missing,' the first concern would be, does he have a gun to be able to
follow up on that threat?

1 *Id.* at 10–11. The Court therefore found adequate justification for officers to accompany
2 Defendant and adequate justification to seize the handguns once officers knew of them.
3 Accordingly, the Court denied the suppression motion and the case proceeded to a stipulated-
4 facts bench trial before the undersigned. Petitioner was found guilty of three offenses: Felon in
5 Possession of a Firearm, Illegal Alien in Possession of a Firearm, and Illegal Reentry After
6 Deportation. *United States v. Koh*, CR15-98RSM, Dkt. #88 (W.D. Wash. Mar. 17, 2016).
7 Petitioner thereafter exhausted his direct appeals.
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9 III. DISCUSSION

10 A. Preliminary Considerations

11 A motion under 28 U.S.C. § 2255 permits a federal prisoner, in custody, to collaterally
12 challenge his sentence claiming it was imposed in violation of the Constitution or laws of the
13 United States, or that the Court lacked jurisdiction to impose the sentence or that the sentence
14 exceeded the maximum authorized by law. A petition seeking relief under § 2255 is subject to a
15 one-year statute of limitations. 28 U.S.C. § 2255(f). Here, the Government does not assert that
16 the Petition is untimely or contest that the Court has jurisdiction to hear the Petition.²
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19 ² The Court notes that there may be a question of whether the Petition is moot. The Petition was
20 filed while Petitioner was confined in D. Ray James Correctional Institute. Dkt. #1 at 1.
21 However, Petitioner has subsequently indicated that he had served his sentence and was released
22 from prison on November 23, 2018. Dkt. #13 at 1; *Tyars v. Finner*, 709 F.2d 1274, 1279 (9th
23 Cir. 1983) (holding that court maintains jurisdiction following release where petitioner was in
24 custody at time the petition was filed, but that question of mootness remains) (citations omitted);
25 *Lane v. Williams*, 455 U.S. 624, 631 (1982) (challenge to sentence, as opposed to conviction,
26 mooted by release); Dkt. #1-1 at 1–2 (making clear that Petitioner challenges his *sentence*);
27 *Abdala v. I.N.S.*, 488 F.3d 1061, 1063–64 (9th Cir. 2007) (petition moot following deportation
“because successful resolution of their pending claims could no longer provide the requested
relief”). Petitioner is apparently now in the custody of the United States Immigration and
Customs Enforcement (ICE) awaiting possible deportation to South Korea. Dkt. #14 at 4. There
is no question that Petitioner is “in custody,” but he is in the custody of ICE. Petitioner appears
to longer be in custody because of the sentence imposed by this Court as he has served his
sentence. *Baily v. Hill*, 599 F.3d 976, 981 (9th Cir. 2010) (being held in custody “does not allow

1 **B. Fourth Amendment Claims**

2 As the Government has noted, challenges pursuant to the Fourth Amendment are not
3 available on collateral review where the Petitioner was provided a full and fair opportunity to
4 raise the issue at trial and on direct appeal. *United States v. Hearst*, 638 F.2d 1190, 1196 (9th
5 Cir. 1980) (citing *Tisnado v. United States*, 547 F.2d 452, 456 (9th Cir. 1976); *Stone v. Powell*,
6 428 U.S. 465, 494 (1976)); *Roberts v. United States*, No. 1:10CR173-1, 2015 WL 3619545, at
7 *6 (M.D.N.C. June 9, 2015) (gathering cases in support further support). “If the provided
8 opportunity has been squandered due to defense counsel’s incompetence or misconduct, a
9 convict’s only option on collateral review is a Sixth Amendment claim based on inadequate
10 assistance of counsel.” *Hearst*, 638 F.2d at 1196 (citing *Canary v. Bland*, 583 F.2d 887, 890 (6th
11 Cir. 1978)). For this reason, the central issue in the Petition is Petitioner’s ineffective assistance
12 of counsel claim. But, because this claim turns in part on Petitioner’s other arguments, the Court
13 will review the underlying Fourth Amendment arguments.
14

15 **1. Petitioner’s California Arrest**

16 Petitioner first argues that a constitutional violation occurred during his arrest in Los
17 Angeles, California, in July 2014. Dkt. #1-1 at 2. Petitioner offers scant detail, and merely
18 alleges that law enforcement inspected—without the owner’s consent—a hotel registry pursuant
19 to a Los Angeles ordinance and that this ultimately led to Petitioner’s arrest. Petitioner argues
20 that because the ordinance that police possibly relied upon was later struck down as
21 unconstitutional, his identity should be suppressed as “fruit of an unconstitutional search.” *Id.* at
22 3–7 (citing *City of Los Angeles v. Patel*, ___ U.S. ___, 135 S. Ct. 2443 (June 22, 2015)).
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26 challenge to all aspects of the sentence, petitioner must be attacking the lawfulness of being held
27 in custody”). Nevertheless, because the Court concludes that the Petition otherwise lacks a legal
basis, the Court does not consider this issue that the parties have not raised.

1 Petitioner acknowledges, however, that his argument is contrary to clear precedent laid
2 forth by the Supreme Court in *Immigration & Naturalization Serv. v. Lopez-Mendoza*, 468 U.S.
3 1032, 1039 (1984) (“The ‘body’ or identity of a defendant or respondent in a criminal or civil
4 proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that
5 an unlawful arrest, search, or interrogation occurred.”). Despite this clear guidance, Petitioner
6 argues that the Supreme Court did not foreclose a different result for “egregious violations of
7 Fourth Amendment or other liberties that might transgress notions of fundamental fairness” and
8 that his case presents just such a situation. Dkt. #1-1 at 4–5 (quoting *Lopez-Mendoza*, 468 U.S.
9 at 1050–51). But Petitioner does nothing to support this position beyond asking the “Court to
10 courageously make a gut decision against unconstitutional precedents.” *Id.* at 7. Petitioner does
11 not point to any facts making the circumstance of his arrest egregious and does not provide any
12 case law that supports his position. For these reasons and the additional reasons laid out by the
13 Government, Dkt. #6 at 15–18, the Court finds no merit in Petitioner’s argument.
14

15 **2. Suppression of Handgun Evidence**

16 Petitioner continues to believe that the Court erred in denying his motion to suppress in
17 his criminal case and maintains that this provides a basis for § 2255 relief. But review of
18 Petitioner’s argument makes clear that this is merely a rehashing of arguments Petitioner made
19 before this Court and on appeal. To the extent Petitioner challenges the outcome of the
20 suppression hearing, Petitioner is precluded from doing so as it was already a basis for his direct
21 appeal. Dkt. #1 at 6–7; *United States v. Redd*, 759 F.2d 699, 701 (9th Cir. 1985) (where petitioner
22 “raised this precise claim in his direct appeal, and this court expressly rejected it,” the claim
23 “cannot be the basis of a § 2255 motion”) (citing *Egger v. United States*, 509 F.2d 745, 748 (9th
24 Cir.), *cert. denied*, 423 U.S. 842 (1975)). More precisely, it appears that Petitioner’s argument
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1 is that his counsel was ineffective in defending Petitioner at the suppression hearing. *See* Dkt.
2 #8 at 4–5 (making clear that his primary objection to the suppression hearing related to his
3 handguns was the performance of his trial counsel and noting that counsel did not raise
4 Petitioner’s arguments and did not cross examine police officers with Petitioner’s testimony).
5 Accordingly, and to the extent necessary, the Court addresses this argument in the context of
6 Petitioner’s ineffective assistance of counsel claim.

7 **C. Ineffective Assistance of Counsel**

8
9 To establish a claim for ineffective assistance of counsel, Petitioner must prove (1) that
10 counsel’s performance was deficient and, (2) that the deficient performance prejudiced the
11 defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To establish that counsel’s
12 performance was deficient, a petitioner must show that counsel’s performance fell below an
13 objective standard of reasonableness. *Id.* at 688. There is a strong presumption that counsel was
14 within the range of reasonable assistance. *Id.* at 689. To establish that counsel’s performance
15 prejudiced the defense, a petitioner “must show that there is a reasonable probability that, but for
16 counsel’s unprofessional errors, the result of the proceeding would have been different. A
17 reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.*
18 at 694.

19
20 Petitioner makes clear that he “was very grateful [sic] for his counsels who did their best
21 in their legal knowledge and experience to help him.” Dkt. #1-1 at 7. Nevertheless, Petitioner
22 advances ineffective assistance of counsel claims premised primarily on his counsels’ strategic
23 decisions.

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25 Petitioner first claims that his trial counsel thought that his unconstitutional arrest
26 argument “was useless and a waste of his time” and “[i]nstead of writing a motion to dismiss for
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1 defendant, he filed a ‘motion to allow defendant to appear pro se for limited purpose of presenting
2 pro se motion to dismiss.’” *Id.* at 8; *but see, Redd*, 759 F.2d at 701 (ineffective assistance of
3 counsel claim cannot be based on counsel’s failure to raise meritless claims). Petitioner argues
4 that he was denied the assistance of counsel when he was forced to ineffectively defend himself.
5 But, as noted above, Petitioner’s argument lacked merit and counsel’s choice to not pursue the
6 argument on his behalf was a strategic choice. *Sexton v. Cozner*, 679 F.3d 1150, 1156 (9th Cir.
7 2012) (disagreement concerning strategy does not establish ineffective assistance of counsel).
8 Even so, Petitioner was not prejudiced as he does nothing to show that counsel’s assistance in
9 raising a meritless argument would have resulted in a different outcome.
10

11 This is also true to the extent Petitioner complains of his appellate counsel’s failure to
12 pursue the matter on appeal. Dkt. #1-1 at 8–10. Petitioner did not have a “constitutional right to
13 compel appointed counsel to press nonfrivolous points requested by [him], if counsel, as a matter
14 of professional judgment, decides not to present those points.” *Jones v. Barnes*, 463 U.S. 745,
15 751 (1983). Further, Petitioner does not demonstrate any prejudice stemming from his counsel’s
16 strategic decision. *Smith v. Robbins*, 528 U.S. 259, 285–86 (2000) (defendant “must show a
17 reasonable probability that, but for his counsel’s unreasonable failure to [pursue an issue], he
18 would have prevailed on his appeal”).
19

20 Lastly, Petitioner’s argument that he was denied effective assistance of counsel regarding
21 the suppression hearing fails for much the same reason. Petitioner offers nothing to suggest that
22 his desired actions—had they been taken by counsel—would have led to any different outcome.
23 At most, the additional testimony may have added more evidence to the mix but cannot be said
24 to have likely changed the Court’s ultimate decision. *Maryland v. Kulbicki*, ___ U.S. ___, 136
25 S. Ct. 2, 5 (2015) (Sixth Amendment requires only “reasonable competence,” not “perfect
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1 advocacy"). Counsel's strategic choice to forego these questions was far from egregious and did
2 not rob Petitioner of effective assistance of counsel.

3 **D. Certificate of Appealability**

4 A petitioner seeking post-conviction relief under § 2255 may appeal this Court's
5 dismissal of his federal habeas petition only after obtaining a certificate of appealability from a
6 district or circuit judge. The Court finds that a Certificate of Appealability ("COA") is not
7 warranted in this case. A COA may issue only where a petitioner has made "a substantial
8 showing of the denial of a constitutional right." *See* 28 U.S.C. § 2253(c)(3). A petitioner satisfies
9 this standard "by demonstrating that jurists of reason could disagree with the district court's
10 resolution of [her] constitutional claims or that jurists could conclude the issues presented are
11 adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327
12 (2003). For the reasons above, the Court finds no basis to issue a COA.

14 **VI. CONCLUSION**

15 Having considered the briefing and record herein, the Court hereby finds and ORDERS:

- 16 1. Petitioner's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence
17 by a Person in Federal Custody (Dkt. #1) is DENIED. No COA shall be issued.
- 18 2. This matter is now CLOSED.
- 19 3. The Clerk of the Court is directed to forward a copy of this Order to Petitioner.

20 DATED this 25th day of April 2019.

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24 RICARDO S. MARTINEZ
25 CHIEF UNITED STATES DISTRICT JUDGE
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